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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,403	12/19/2001	Brian K. Doyle	ADV12P302A	4925

277 7590 05/24/2002

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EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	2

DATE MAILED: 05/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

T-P-2

Office Action Summary

Application No.	Applicant(s)
10/025,403	Doyle et al.
Examiner	**Art Unit**
Lien Tran	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) [X] Responsive to communication(s) filed on Dec. 19, 2001 .

2a) [ ] This action is **FINAL.** 2b) [X] This action is non-final.

3) [ ] Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) [X] Claim(s) 1-40 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) [ ] Claim(s) _____ is/are allowed.

6) [X] Claim(s) 1-40 is/are rejected.

7) [ ] Claim(s) _____ is/are objected to.

8) [ ] Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) [ ] The specification is objected to by the Examiner.

10) [ ] The drawing(s) filed on _____ is/are a) [ ] accepted or b) [ ] objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) [ ] The proposed drawing correction filed on _____ is: a) [ ] approved b) [ ] disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) [ ] The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) [ ] Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) [ ] All b) [ ] Some* c) [ ] None of:

1. [ ] Certified copies of the priority documents have been received.
2. [ ] Certified copies of the priority documents have been received in Application No. _____ .
3. [ ] Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) [ ] Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) [ ] The translation of the foreign language provisional application has been received.

15) [ ] Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) [X] Notice of References Cited (PTO-892)
2) [ ] Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) [ ] Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) [ ] Interview Summary (PTO-413) Paper No(s). _____
5) [ ] Notice of Informal Patent Application (PTO-152)
6) [ ] Other: _____

1. Claims 14-16, 18 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 14-16 are vague and indefinite. It is not clear what applicant is claiming. Is the food product a parfried article, non-fried finished-cooked component, finish-cooked component or these components are additional components added to the substrate and coating.

In claim 18, terms such as " crispy" and " soft" are indefinite because they are relative terms; what would be considered as crispy and soft.

Claim 24 has the same problem as claim 18.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

3. Claims 1-2,6,8,14,16,17,18,24-27 and 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Baur et al.

Baur et al disclose food product comprising a food substrate coated with a cereal-based batter. The food substrate includes cereal-based products such as pizza dough, biscuit dough, grain-based snack, veggie burger and breakfast cereals. The batter comprises yellow corn flour,

food starch, wheat flour, salt, sugars and leavening. The coated food substrate can be parfried, frozen and finished cooked at a latter time or the coated food substrate can be fully cooked. The parfried food product can be cooked to completion by conventional means such as baking by conventional oven, microwave oven, deep-fat frying or sauteing. (See columns 2-4)

The reference discloses all the limitations of the above cited claims.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 3-5,7,9-13,15,19-23,28-33,35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baur et al.

The teaching of Baur et al is described above. Baur et al do not disclose a dough made of potato, a product which emulates a slice of natural food, the thickness of the food substrate, heating in a toaster, a baked product, the product is waffle, pancake or cookies, dusting the food substrate and using dried ingredients for the coating.

It would have been obvious to make the dough out of any ingredients depending on the taste desired. It would also have been obvious to apply a batter coating to any dough product when it is desired to obtain crisp outer coating; the selection of the food substrate would have been an obvious matter of choice. It would also have been obvious to make the product in any shape and form; this is a matter of design form and it would have been a matter of preference. It would also have been obvious to make the product to have any varying thickness; this is a matter of choice. While Baur et al teach frying the product, it would have been obvious to bake the product if it is desired to reduce the fat content and a baking texture is desired. It would also have been obvious to apply the coating as a batter or as dried ingredients; this is well known in the art and would have been an obvious matter of choice. It would also have been obvious to dust the substrate with dried ingredient before coating to obtain a smooth coating; this is well known in the art.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Walter Jr. et al disclose method for producing cooked sweet potato products.

Slimak discloses processes for products from sweet potato.

Ishii et al disclose pasty mass of processed tuber and an edible outer cover.

Chalupa disclose process for preparing low-fat fried type or baked food products.

Melvej discloses batter mix for frozen food products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

May 17, 2002

LIEN TRAN
PRIMARY EXAMINER
Group 1761

Notice of References Cited

Application/Control No.	Applicant(s)/Patent Under Reexam	
10/025,403	Doyle et al.	
Examiner	Art Unit	
Lien Tran	1761	Page 1 of 1

U.S. PATENT DOCUMENTS

	Document Number Country Code-Number-Kind Code	Date MM-YYYY[1]	Name	Classification[2]	
A	6,288,179	9/2001	Baur et al	426	94
B	5,431,944	7/1995	Melvej	426	637
C	5,492,707	2/1996	Chalupa et al	426	94
D	4,520,034	5/1985	Ishii et al	426	637
E	5,204,137	4/1993	Slimak	426	637
F	6,197,363	3/2001	Walter Jr. et al	426	637
G					
H					
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FOREIGN PATENT DOCUMENTS

	Document Number Country Code-Number-Kind Code	Date MM-YYYY[1]	Country	Name	Classification[2]
N					
O					
P					
Q					
R					
S					
T					

NON-PATENT DOCUMENTS

	Include, as applicable: Author, Title, Date, Publisher, Edition or Volume, Pertinent Pages
U	
V	
W	
X	

* A copy of this reference is not being furnished with this Office action. See MPEP § 707.05(a). [1] Dates in MM-YYYY format are publication dates. [2] Classifications may be U.S. or foreign.

LIEN TRAN
PRIMARY EXAMINER

5/17/03